IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.459 of 2004

Decided on: September 13, 2006

Sharda Devi **.....Appellant.**

VERSUS

Smt. Chander Kala and others **.....Respondents.**

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the Appellant : **Mr. Bhupender Gupta, Senior Advocate, with Mr. Neeraj Gupta, Advocate.**

For the respondents : **Mr. G.D. Verma, Senior Advocate, with Mr. B.C. Verma, Advocate.**

Surjit Singh, Judge (Oral)

Heard and gone through the record.

2. Plaintiffs-respondents No.1 to 6 filed a suit seeking declaration that they were owners in possession of certain property, which they claimed was bequeathed to them by Seesh Ram, who was alleged to be husband of respondent No.1 and father of remaining respondents No.2 to 6. Relief of permanent prohibitory injunction was also sought restraining the present appellant-defendant Sharda Devi from causing any interference in the possession of the respondents-plaintiffs over the suit land, the description of which was given in the plaint.

3. Appellant-defendant Sharda Devi contested the claim of the respondents-plaintiffs. She denied that any Will was made by

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Whether the reporters of the local papers may be allowed to see the judgment?

Seesh Ram in favour of the respondents-plaintiffs. She also denied the status of plaintiffs-respondents No.1 to 6 as the widow and the children of Seesh Ram. Instead she claimed that Seesh Ram was her mother's brother and was unmarried and issueless and she had been looking after and serving him and pleased with her services he made a Will in her favour in the year 1993. She also pleaded that one Gopal Singh, brother of respondent No.1 Chander Kala, had got executed a sale deed in respect of some land belonging to Seesh Ram by playing fraud on him and that that sale had been challenged by Seesh Ram during his life time, but when he died during the pendency of the suit, his LRs withdrew that suit with leave to file a fresh one on the same cause of action. She pleaded that said Gopal Singh was a necessary party and when Gopal Singh was ordered to be impleaded as defendant by the Court, on her request, she filed a counterclaim, challenging the sale made by Seesh Ram in favour of Gopal Singh. Said Gopal Singh is proforma-respondent No.7 in this appeal.

4. Trial Court framed various issues on the pleadings of the parties and recorded the evidence of the parties. At the end of the trial, the Court found that both the Wills were not genuine but at the same time decreed the suit holding that the respondents-plaintiffs were the natural heirs of Seesh Ram, being his widow and children, and passed a decree declaring them as owners in possession of the suit property and restraining the appellant-defendant from causing any interference in their possession. Counterclaim filed by the appellant-defendant was dismissed.

5. Appellant-defendant tried her luck by filing an appeal in the Court of District Judge. Appeal has been dismissed. The first Appellate Court has upheld the finding of the trial Court as regards the relationship of the respondents-plaintiffs with Seesh Ram. The finding of the trial Court that Will in favour of the respondents-plaintiffs is not genuine has been set aside and it has been held that Seesh Ram made a valid Will in favour of the respondents-plaintiffs. Consequently, the appeal has been dismissed by the District Judge.

6. Learned counsel representing the appellant-defendant has stated that admittedly, per her own testimony, Chander Kala was married to one Udey Ram before her alleged marriage with Seesh Ram and that there was no evidence on record that her marriage with said Udey Ram stood dissolved either by a decree of the Court or according to the custom governing the parties and, therefore, it was required to be presumed that the marriage was still subsisting and, if that is so, she could not be said to be the wife of Seesh Ram nor could the other respondents be said to be the children of said Seesh Ram. The submission though appears to be quite attractive, yet there is one document in the form of admission by Seesh Ram, wherein he conceded that respondent No.1 had been living with him as his wife. This document, which is Ex.PW-1/A, is a joint statement made by Seesh Ram and Chander Kala before the Gram Panchayat in the proceedings under Section 125 Cr.P.C. In this statement Seesh Ram admitted that Chander Kala had been living with him as his wife and he undertook to maintain her and respondents No.2 to 6 and Chander Kala undertook to serve him like a good wife. Not only

this, Seesh Ram also admitted in the said statement that he had made a Will and would revoke the same. This statement was made by Seesh Ram and Chander Kala in the Gram Panchayat in the year 1996. The Will set up by the appellant-defendant is dated 24.12.1993 (Ex.DW-4/A). It can legitimately be presumed that the reference in the said statement is to this Will of 24.12.1993 which was made in favour of the appellant-defendant. It was subsequent to the making of this statement that the Will set up by the respondents-plaintiffs was executed, because its date is 14.9.1997. The same is Ex. PW-1/B.

7. May be that on account of there being no evidence on record regarding dissolution of marriage between respondent No.1 and Udey Ram, respondent No.1 cannot be treated as the legally wedded wife of Seesh Ram, as is canvassed by the learned counsel for the appellant, but the fact remains that Chander Kala alongwith respondents No.2 to 6 had been living with Seesh Ram and had been rendering services to him as his wife, per statement Ex. PW-1/A, and if that is so, the Will Ex. PW-1/B can be presumed to be a genuine one. This is especially so, when in the statement Ex. PW-1/A Seesh Ram got it specifically recorded that the Will, already executed by him, which presumably is the Will Ex. DW-4/A set up by the appellant-defendant, would be revoked.

8. In view of the abovestated position, I find no merit in the submissions made by the learned counsel for the appellant-defendant. For the foregoing reasons, the finding recorded by the learned first Appellate Court, pertaining to the Will set up by the

respondents-plaintiffs, cannot be said to be perverse. If that is so, no substantial question of law can be said to arise. Hence, the appeal is dismissed.

CMP No.919/2004

9. Dismissed. Interim order dated 18.10.2004, passed on the application, is vacated.

September 13, 2006(sd) **(Surjit Singh), J.**